IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.P.BALACHANDRAN

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

CRL.A.No. 1811 of 2005(B)

SC.48/2002 OF ADDL. SESSIONS JUDGE, FTC NO.1 (ADHOC), MANJERI
CP.84/2001 OF JUDL. MAGISTRATE OF FIRST CLASS COURT, PARAPPANANGADI
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APPELLANT:

PARAMESWARAN, S/O. GANAPATHY,
CONVICT NO. 1808, CENTRAL PRISON,
KANNUR.

BY ADV .SHEHANA KARTHIKEYAN(STATE BRIEF)

RESPONDENTS:

STATE OF KERALA.

BY PUBLIC PROSECUTOR SRI. NOBLE MATHEW

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

CRL.A.NO.1811 OF 2005 (D)

Dated this the 25th day of October, 2007

J U D G M E N T

KOSHY,J.

Appellant accused was convicted for the offences punishable under Section 302 of the Indian Penal Code on the allegation that, he murdered his brother - in - law (sister's husband) at 7.30 p.m. on 18.12.1998. This appeal is filed from Jail. Since the appellant is unable to engage an advocate, he was represented by legal aid counsel Smt.Shehna Karthikeyan, appointed as State Brief.

2. PW1, son of the deceased gave Ext.P9 F.I.Statement immediately after the incident and on that basis Ext.P1 F.I.R. was registered. PW1 is an eye witness. He deposed that while he was coming to his house by about 7.30 p.m., before he reached the house, in the road, he saw his father was beating on the face of the accused, his uncle and then his uncle inflicted injuries with a knife and stabbed his father on the

neck. Seeing this, his mother was crying and standing in the road. He and neighbours who came there took the deceased to the hospital and afterwards he died. We are of the opinion that this F.I.Statement was given immediately after the incident and without any time for manipulation or tutoring. This is the first narration of the incident by the son of the deceased himself. He also stated that there was enmity between father and uncle and they used to quarrel earlier also. PW1 also confirmed that he gave F.I.Statement and there is no substantial difference from the first version and the deposition. PW2 another occurrence witness, neighbour turned hostile and his evidence is not helpful to prosecution or to the defence. PW3 is the wife of the deceased and sister of the accused. She deposed that at about 7.30 p.m. she heard sounds of scuffle and on hearing the sounds, she reached the place and saw the scuffle going on between his brother and husband. In that process, his brother inflicted stab injuries on her husband and seeing this she cried and fainted. On the basis of the confession given by the accused, MO1 knife was recovered. Ext.P6 is the seizure mahazer and Ext.P6(a) is the relevant disclosure in the

recovery. In fact 313 statement also shows that deceased used to quarrel with the wife and against the accused after taking drinks. On that day he came with a knife for quarrel. There was a struggle for getting the knife and he is not aware whether any injury caused during the scuffle.

3. Now we will come to the evidence of PW4 doctor who conducted post mortem examination. Following are the ante-mortem injuries noted in Ext.P3 post mortem certificate issued by PW4:

ANTEMORTEM INJURIES:

1. Incised penetrating wound 3 x 1 cm vertically placed from middle of left clavicle on the left side of neck with a depth of 11 cm directed downwards and osteromedialy, cutting the left carotid artery and adjacent structures.

2. Incised wound of 7.5 x 0.5 cm horizontal wound on mastoid region of left side edges are well marked.

3. Another incised wound above 1.75 x 0.5 cm below the left clavicle near the teral end.

He stated that injury No.1 was fatal. It is also stated that it can be caused if there is scuffle for getting possession of a weapon like MO1 and injury Nos.2 and 3 can be caused in a scuffle. In re-examination it is clarified that depth of injury No.1 is 11 cm, and depth of injury depends upon the force used. Accused and deceased are living in enmity. It is very clearly stated by PWs.1 and 3 and it is evident in 313 statement that there were disputes between accused and deceased and according to the accused, deceased used to come in an intoxicating manner and used to beat his sister. In any event, motive for the incident is proved. The evidence of PWs.1 and 3 also shows that there was scuffle. PW1 who gave the first information statement stated that when he came to the place of incident and lighted the torch, he saw his father (deceased) was beating on the face of the accused three times and then the accused used the knife and the injury occurred. PW3 also stated that he came out of the house hearing the sounds of a scuffle and she saw deceased and accused were fighting and accused inflicted injuries. This shows that injury occurred in a scuffle at 7.30 p.m. Only accused and deceased were involved

in the fight. There was a knife and according to the 313 statement scuffle was to take possession of the knife. During the process, the injury was caused. Knife was recovered at the instance of the accused and the Doctor also stated that injury Nos.2 and 3 can be caused in a scuffle for the possession of the knife and even injury No.1 can be caused in that scuffle. However, we note that there is no injury on the accused and injury was only on the deceased and injury No.1 is a very serious injury likely to cause death. Even though it was argued that accused is entitled to a private defence and deceased started the incident, we are of the opinion that injuries were caused in a sudden fight and it is not a preplanned murder and in the scuffle injury was caused by the accused with MO1 knife. As per PW1's evidence, it is the deceased who was beating the accused. Thereafter accused started inflicting. There is no evidence to show that how the scuffle started and PW1 and PW3 came to the spot after fight started. When PW1 came his father was beating the accused. In these circumstances, we are of the opinion that this is not a case

where accused can be convicted under Section 302 of IPC and he can only be convicted under Section 304 Part II of IPC. Hence we set aside the conviction and sentence under Section 302 of IPC and we convict the accused for offence punishable under Section 304 Part II of IPC and sentence to undergo five years rigorous imprisonment with a fine of Rs.15,000/-. If the fine is realised, Rs.10,000/- should be given to the wife of the deceased as compensation and in default of payment of fine, he has to undergo imprisonment for six months more and he is entitled to the right of set off. With the above observations this appeal is allowed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

CRL.A.NO.1811 OF 2005 (D)

J U D G M E N T

25th October, 2007